

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR A GENERAL)	2011-00036
ADJUSTMENT IN RATES)	

O R D E R

On November 17, 2011, the Commission issued an Order ("Rate Order") approving in part an application filed by Big Rivers Electric Corporation ("Big Rivers") for an increase in wholesale electric rates to its three member-owner distribution cooperatives. The application requested a rate increase of \$39.34 million, and the Commission approved an increase of \$26.74 million. Big Rivers then filed a petition on December 6, 2011, pursuant to KRS 278.400, requesting a rehearing of the Rate Order, raising four issues that it alleged were decided erroneously by the Commission. Based on a review of Big Rivers' petition, the Commission granted a rehearing by Order entered December 8, 2011 ("Rehearing Order").

On December 1, 2011, one of the intervenors in this case, Kentucky Industrial Utility Customers, Inc. ("KIUC"), filed an action against the Commission in the Franklin Circuit Court pursuant to KRS 278.410(1). The KIUC action, which was styled as a complaint and assigned Civil Action No. 11-CI-1700, Division I, requested the Court to reverse in part the Rate Order due to three alleged errors and to remand the Rate Order to the Commission for the correction of those errors by establishing new rates for Big Rivers. The three alleged errors set forth in the KIUC complaint were that the Rate

Order: (1) should have eliminated interclass rate subsidies; (2) should have exempted all non-rural customers from payment of any demand-side management ("DSM") related expenses; and (3) should have accepted the KIUC proposed depreciation rates in lieu of accepting Big Rivers' proposed depreciation rates.

KIUC then filed with the Commission on December 14, 2011 a motion to dismiss the rehearing and to vacate the Rehearing Order, claiming that the Commission lacked jurisdiction to enter the Rehearing Order because the KIUC complaint was filed with the Court before the Big Rivers petition for rehearing was filed with the Commission. On December 15, 2011, Big Rivers filed in the Franklin Circuit Court an action against the Commission, which was assigned Civil Action No. 11-CI-1757, Division II, pursuant to KRS 278.410(1), raising the same four issues that it raised with the Commission on rehearing. Big Rivers stated in its Court complaint that its filing was made, in part, to assure preservation of its rights due to the KIUC motion to dismiss the Commission rehearing.

While the KIUC's motion to dismiss and vacate was pending at the Commission, KIUC filed a second action on January 10, 2012 in the Franklin Circuit Court. This second action, which was styled as a petition for the issuance of a writ of mandamus, and assigned Civil Action No. 12-CI-37, Division I, requested the Court to direct the Commissioners to enter an order vacating the Rehearing Order and ceasing the Commission's review of the Rate Order. The Commission then entered an Order on February 14, 2012 denying the KIUC motion to dismiss and to vacate. The Franklin Circuit Court then entered an Order on March 8, 2012 finding that the filing of KIUC's first action in Court did not divest the Commission of jurisdiction to rehear the Rate

Order, and that the three Court actions (i.e., the KIUC challenge to the Rate Order, the Big Rivers challenge to the Rate Order, and the KIUC petition for a writ of mandamus) had all been prematurely filed. The Court concluded its findings by stating that it “should not attempt to wade into a dispute which has not been finally resolved by the administrative agency with primary jurisdiction in this matter.” The Court then dismissed without prejudice the three actions, remanding them to the Commission “for final adjudication under its statutory and regulatory authority to consider and rule on the petition for rehearing under KRS 278.400.”

It is clear from the Court’s March 8, 2012 Order that both KIUC and Big Rivers have disputes over the Rate Order, and that the Commission is the agency with jurisdiction over all of the rate matters in dispute. Pursuant to KRS 278.040(2) and KRS 279.210(1), the Commission has exclusive jurisdiction over the rates of Big Rivers. In addition, KRS 278.260(1) empowers the Commission with original jurisdiction over complaints as to the rates of Big Rivers, and the Commission can make such investigation of those rates as it deems necessary or convenient, either upon a complaint in writing or on its own motion. Further, pursuant to KRS 278.390, the Rate Order continues in force until revoked or modified by the Commission, unless the Order is suspended or vacated in whole or in part by order or decree of a court of competent jurisdiction, while, under KRS 278.270, the Commission is authorized to prescribe a just and reasonable rate to be charged prospectively after conducting an investigation under KRS 278.260(1).

These statutes grant the Commission plenary authority to expand the scope of our investigation in this rehearing to include the disputed issues raised at the Franklin

Circuit Court by KIUC, now that all of the Court actions have been remanded to the Commission. We find that, on our own motion, a full and thorough investigation should be conducted of all the disputed rate issues in one forum at the same time, and that this will result in administrative efficiencies, conserve the scarce resources of all the parties and the Commission, and lead to an expedited resolution of the disputed issues and the correction of actual errors, if any. Thus, the Commission gives notice that the three alleged errors raised in KIUC's complaint and enumerated above will be investigated as part of this rehearing, along with the four issues that were raised by Big Rivers and enumerated in the Rehearing Order. This may ultimately result in the Commission modifying the Rate Order based on considerations of not only the disputed issues raised by Big Rivers, but also the alleged errors raised by KIUC. To ensure that due process is afforded all parties by allowing them an adequate opportunity to present evidence and arguments on all of the issues now being investigated in this rehearing, the procedural schedule will be revised, as discussed below.

Big Rivers has already filed direct testimony in support of its four issues relating to the Rate Order. The existing procedural schedule adopted by Order entered March 7, 2012 provides for discovery of that testimony, the filing of intervenor testimony, and discovery on intervenor testimony. Based on our decision to now expand this investigation of the Rate Order to include the three issues raised at the Franklin Circuit Court by KIUC, we further find that a revised procedural schedule should be established. We note that the existing procedural schedule required intervenor testimony to be filed on April 5, 2012. KIUC was the only intervenor to file testimony, and its testimony addressed not only the Big Rivers rehearing issues but also two of the

three issues that KIUC had raised at the Franklin Circuit Court. Those two issues are that the Rate Order: (1) should have eliminated interclass rate subsidies; and (2) should have exempted all non-rural customers from paying any DSM expenses. The revised procedural schedule set forth in the Appendix establishes a date for KIUC to file testimony in support of its third issue, which was a challenge to the Commission's acceptance of Big Rivers' proposed depreciation rates in lieu of KIUC's proposed depreciation rates. The revised schedule also provides an opportunity for discovery on all three of the KIUC issues and an opportunity for any party except for Big Rivers, which is required, to file testimony in response to the three KIUC issues subject to investigation in this case.

IT IS THEREFORE ORDERED that:

1. The Rehearing Order entered December 8, 2011 is modified to the extent that the issues now subject to investigation in this proceeding shall include the four Big Rivers issues enumerated in that Order and the three KIUC issues that the Rate Order: (1) should have eliminated interclass rate subsidies; (2) should have exempted all non-rural customers from payment of any DSM-related expenses; and (3) should have accepted the KIUC proposed depreciation rates.

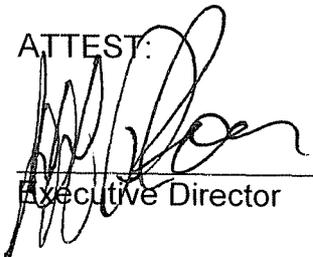
2. The procedural schedule set forth in the Appendix attached hereto and incorporated herein shall be followed in this case and the schedule appended hereto shall supersede the schedule appended to the March 7, 2012 Order.

3. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission

ENTERED *JA*
APR 12 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00036 DATED **APR 12 2012**

Kentucky Industrial Utility Customers ("KIUC") shall file
direct testimony in verified prepared form on its challenge
to the Commission's acceptance of Big Rivers' depreciation
rates in the November 17, 2011 Order no later than 04/27/12

All requests for information to KIUC
shall be filed no later than 05/14/12

KIUC shall file responses to
requests for information no later than 05/29/12

Big Rivers shall file, and any other party may file,
response testimony in verified prepared form on the
three KIUC issues subject to this investigation no later than 06/15/12

Public hearing To Be Scheduled

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